IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR

ORDER

S.B. Civil Writ Petition No.3393/02
M/s. Sujan Mal Gadia & Anr. Vs. State of Raj. & Ors.

Date of Order :: 10th April, 2007

***Hon'ble Mr. Justice Mohammad Rafiq***

Shri Mahendra Shah, Advocate for petitioners.
Shri Harshvardhan Nandwana, Dy. Government Advocate

**REPORTABLE**

The petitioner no.1 M/s. Sujan Mal Gadia, a partnership firm and petitioner no.2 Prakash Gadia who claims to be its proprietor have jointly filed this writ petition challenging the order dated 14.5.02 passed by Executive Engineer (Head Office), Office of the Chief

Engineer PWD, Rajasthan and the further consequential order dated 14.5.02 passed by the same authority. While in the first order, the request for transferring the registration as a `A' Class contractor of the Public Works Department made in the name of proprietorship firm M/s Sujan Mal Gadia in favour of petitioner no.2 Prakash Gadia was denied, but in the second order, it was directed that the registration of such firm was made in the name of Shri Sajan Mal Gadia as its sole proprietor and with his death on 6.1.90, the registration cannot be transferred in favour of Shri Prakash Gadia on the basis of will dated 8.12.88 because the registration as such can be merely treated as a licence and not a property and therefore is not capable of being

transferred. The aforesaid registration was therefore ordered to be cancelled.

I have heard Shri Mahendra Shah, the learned counsel for the petitioners and Shri Harshvardhan Nandwana, the learned Deputy Government Advocate for the State.

Shri Mahendra Shah, the learned counsel for the petitioners argued that when the father of the petitioner had all rights in relation to the proprietorship firm M/s Sujan Mal Gadia in his favour, he is entitled to retain the same, which was bequeathed in his favour under a will executed by his father. The respondents have acted arbitrarily in refusing to transfer the registration taking an illogical view that it could not be considered as a property. Shri Mahendra Shah argued that the

registration of the firm being in existence since 21.8.1989, it has acquired a very high amount of goodwill in the work of civil construction having successfully executed large number of contracts. The goodwill would certainly have a value therefore registration of the firm cannot be cancelled by insisting upon the petitioner to secure another registration. He has therefore prayed that the impugned orders passed by the respondents be quashed and set aside as arbitrary and unreasonable and violative of Article 14 of the Constitution.

On the other hand, Shri Harshvardhan Nandwana, the learned Deputy Government Advocate opposed the writ petition and argued that though Shri Sujan Mal Gadia

had expired long ago on 6.1.90 but the petitioner on the basis of the same registration issued to his father, executed many civil works. In fact he secured many contracts in the name of such firm. After the registration originally made, when the revised enlistment rules came into force, the firm applied on 30.8.93 in the name and style of M/s Sujan Mal Gadia C/o Prakash Gadia for indicating the name of Sujan Mal Gadia as its sole proprietor. Income Tax Clearance Certificate and other required documents were also deposited in the name of Shri Sujan Mal Gadia. All these formalities were completed by Shri Prakash Gadia knowing fully well that Sujan Mal Gadia has already expired on 6.1.90. He however did not notify the

department about his death. The re-registration therefore was secured on the basis of fraud and concealment. He argued that registration of firm as a contractor as per the enlistment rules for registration of contractors in the department cannot be considered as a property and therefore cannot be subject matter of transfer either by way of will or power of attorney or even otherwise. He therefore prayed that the writ petition be dismissed.

Having heard the learned counsel for the parties and perused the record, I find that the respondents while turning down the request of the petitioner for transfer of the registration of the firm in favour of the petitioner no.2 Prakash Gadia also conveyed to him that if he

wanted the registration in his name, he was free to apply to the department in accordance with their enlistment rules afresh. Conduct of the petitioner in securing registration again in the name of the same firm projecting a dead person, namely Shri Sujan Mal Gadia, as the sole proprietor of such firm and thereafter securing contracts and works on the strength of such registration, can hardly entitle him to any equitable relief in the discretionary remedy under writ jurisdiction. Even otherwise, the so called property which is known as goodwill, cannot be accepted as a tangible property in law and therefore on this basis alone, transfer of registration cannot be secured. Action of the respondents in refusing to transfer

and in cancelling the registration cannot be described as arbitrary and unreasonable. In the facts of the case, the impugned orders do not suffer from any legal error so as to warrant interference by this Court in exercise of its powers of judicial review under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-